

Applic. No. 10/089,705

Amdt. dated February 23, 2004

Reply to Office action of October 21, 2003

Remarks/Arguments:

Reconsideration of the application is requested.

Claims 1-11 are now in the application. Claims 1, 2, 4, and 5 have been amended. Claims 10 and 11 have been added, support for which can be found in claims 1 and 2 of the instant application. No new matter has been added.

In item 2 on page 2 of the Office action, claims 1, 4-7, and 9 have been rejected as being fully anticipated by Foldesi (U.S. Patent No. 4,682,463) under 35 U.S.C. § 102.

As will be explained below, it is believed that the claims were patentable over the cited art in their original form and the claims have, therefore, not been amended to overcome the references.

Before discussing the prior art in detail, it is believed that a brief review of the invention as claimed, would be helpful.

Claims 1 and 10 call for, *inter alia*:

a cutting tool for membrane-strip processing being disposed above the membrane star for effecting transfer of cut-out

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membranes from the membrane strip to the membrane star during resting phases of the membrane star and for effecting advancement of membranes positioned on the membrane star to the sealing carrousel during movement phases of the membrane star.

The Foldesi reference discloses a rotating punch plate or feed wheel (110) having circular openings (108) for receiving a cut-out membrane (22). Disposed below the feed wheel (110) are rotating star wheels (112 and 114) which have recesses (106) for receiving a container to be sealed with a cut-out membrane (22). The recesses (106) and circular openings align with each other to allow the sealing of the membrane (22).

Foldesi discloses that in operation the rotating punch plate (110) and the associated star wheels (112 and 114) are rotated in an intermittent indexed fashion. During the dwell period of these wheels a membrane is cut and placed in the recess (108) in the punching station and in a similar opening (108) (which has been indexed above the container) aligned with the sealing head (134), a membrane (22) is brought into contact with a rim (34) of the container (28) (column 9, lines 48-60). After the sealing head and punch retract, the rotating punch plate (110) and the star wheels (112 and 114) index one step in a clockwise direction. Foldesi discloses that a 1/3 second dwell time is required for the heat sealing station to properly adhere a membrane to the container. The speed of the

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operation cannot be increased above this dwell time

restriction (column 10, lines 24-29).

Applicants respectfully disagree with the Examiner's comments in item 2 of the Office action, that "The membranes 22 are advanced to the sealing carrousel 186 (see figure 8; not entirely shown) during a movement phase of the star wheels." Foldesi discloses that the reference numeral (186) pertains to a heat sealing station (186) and the sealing station is just a multiple of the sealing heads (134) provided in the one-out assembly. Foldesi discloses that in Fig. 8 the star wheel assembly (180) does not include a showing of a punch plate or rotary wheel similar to wheel (110) but that such a wheel is present (column 10, lines 37-45). Therefore, the three-out assembly of Foldesi does not operate any differently than the one-out assembly.

As in the one-out assembly of Foldesi, the membranes only leave the rotating punch plate (not shown in the 3 out assembly, but comparable to 110 in the one-out assembly) when being attached to a container. The dwell time of the rotating punch plate in the three-out assembly is identical to the one out assembly. The heat sealing station (186) of Foldesi is not a carrousel as suggested by the Examiner, it is merely a plurality of the sealing heads (134). Therefore, in Foldesi,

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the membranes are not advanced to a sealing carrousel as suggested by the Examiner.

The reference does not show a cutting tool for membrane-strip processing being disposed above the membrane star for effecting transfer of cut-out membranes from the membrane strip to the membrane star during resting phases of the membrane star and for effecting advancement of membranes positioned on the membrane star to the sealing carrousel during movement phases of the membrane star, as recited in claims 1 and 10 of the instant application. The Foldesi reference discloses that the membranes are transferred to and sealed on containers during a 1/3 second dwell time. The speed of the operation cannot be increased above this dwell time restriction regardless if it is a one-out assembly or the three-out assembly shown in Fig. 8. This is contrary to the invention of the instant application as claimed, in which a cutting tool for membrane-strip processing is disposed above the membrane star for effecting transfer of cut-out membranes from the membrane strip to the membrane star during resting phases of the membrane star and for effecting advancement of membranes positioned on the membrane star to the sealing carrousel during movement phases of the membrane star.

Since claims 1 and 10 are believed to be allowable, dependent claims 4-7, 9, and 11 are believed to be allowable as well.

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In item 4 on page 3 of the Office action, claims 2-3 and 8 have been rejected as being obvious over Foldesi (U.S. Patent No. 4,682,463) in view of Foldesi et al. (U.S. Patent No. 5,522,200) under 35 U.S.C. § 103. Foldesi et al. do not make up for the deficiencies of Foldesi. Since claim 1 is believed to be allowable, dependent claims 2-3 and 8 are believed to be allowable as well.

Even though claims 2 and 3 are believed to be allowable, the following remarks pertain the rejection of these claims:

Foldesi et al. disclose a die cutting assembly that operates in conjunction with the heater head. The punch moves upwardly to cut a seal from a web and positions the seal to be picked up by the heater head under vacuum (column 4, lines 10-15). Therefore, Foldesi et al. disclose a sealing head having a vacuum, however, Foldesi et al. do not disclose a number of vacuum stations disposed on the membrane star. This is contrary to the invention of the instant application as claimed, in which a number of vacuum stations are disposed on the membrane star.

It is a requirement for a *prima facie* case of obviousness, that the prior art references must teach or suggest all the claim limitations.

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The references do not show or suggest a number of vacuum stations disposed on the membrane star, as recited in claim 2 of the instant application.

The references applied by the Examiner do not teach or suggest all the claim limitations. Therefore, it is believed that the Examiner has not produced a *prima facie* case of obviousness.

It is accordingly believed to be clear that none of the references, whether taken alone or in any combination, either show or suggest the features of claims 1 or 10. Claims 1 and 10 are, therefore, believed to be patentable over the art and since all of the dependent claims are ultimately dependent on claims 1 or 10, they are believed to be patentable as well.

In view of the foregoing, reconsideration and allowance of claims 1-11 are solicited.

In the event the Examiner should still find any of the claims to be unpatentable, counsel respectfully requests a telephone call so that, if possible, patentable language can be worked out.

Petition for extension is herewith made. The extension fee for response within a period of one month pursuant to Section

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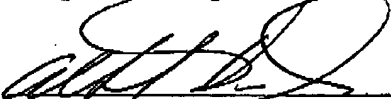
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1.136(a) in the amount of \$110 in accordance with Section 1.17

is enclosed herewith.

Please charge any other fees which might be due with respect
to Sections 1.16 and 1.17 to the Deposit Account of Lerner &
Greenberg P.A., No. 12-1099.

Respectfully submitted,



For Applicant(s)

AKD:cgm

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